

J O Y C E



J A C O B S

ATTORNEYS AT LAW

DOCKET FILE COPY ORIGINAL

RECEIVED

DEC 17 1993

December 17, 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Via Hand Delivery

William F. Caton, Acting Secretary
Federal Communications Commission
Washington, D.C. 20554

Re: **Capitol Radiotelephone Company, Inc.**
PR Docket No. 93-231

Dear Mr. Caton:

Transmitted herewith, on behalf of RAM Technologies, Inc., please find the original and six (6) copies of its Opposition to Bureau Motion to Enlarge Issues.

If you have any questions or would like additional information concerning this matter, kindly contact the undersigned.

Sincerely,

Frederick M. Joyce

FMJ/id
enc.

No. of Copies rec'd
List ABCDE

056

211 N. Union Street, Suite 100
Alexandria, VA 22314

Main Office
2300 M Street, NW, Suite 130
Washington, DC 20037

202-457-0100
Fax 202-457-0186

Chevy Chase Metro Building
Two Wisconsin Circle, Seventh Floor
Chevy Chase, MD 20815

RECEIVED

DEC 17 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matters of)
)
Application of)
)
CAPITOL RADIOTELEPHONE, INC.)
d/b/a, CAPITOL PAGING)
)
For a Private Carrier Paging)
Facility on the 152.48 MHz)
Frequency at Huntington/Charleston,)
West Virginia; et al.)

PR Docket No. 93-231

To: Hon. Joseph Chachkin, Administrative Law Judge

RAM TECHNOLOGIES OPPOSITION TO BUREAU
MOTION TO ENLARGE ISSUES

Frederick M. Joyce
Christine McLaughlin
Its Counsel

JOYCE & JACOBS
2300 M Street, N.W.
Suite 130
Washington, D.C. 20037
(202) 457-0100

Date: December 17, 1993

TABLE OF CONTENTS

| | <u>Page</u> |
|---|-------------|
| Summary. | 1 |
| I. Summary of Facts. | 2 |
| II. The Motion Violates Rule 1.229(d) | 5 |
| III. There Has Been No Abuse of Process. | 5 |
| IV. The Bureau's Duty to Prosecute. | 8 |
| V. The Settlement Would Not "Burden" The Bureau. | 9 |
| VI. No Evidence is "Exclusively" Under RAM's Control. . .10 | |
| VII. There Has Been No "Private Gain" to RAM | .11 |
| Conclusion | .13 |
| EXHIBIT ONE | |
| EXHIBIT TWO | |
| EXHIBIT THREE | |

SUMMARY

The Bureau's Motion to Enlarge should be denied. In addition to violating the attestation requirements of Section 1.229, the Bureau's Motion is without substantive merit.

The settlement proffered by RAM and Capitol simply accomplishes what RAM has sought for over three years: it guarantees that RAM's licensed operations on the 152.48 MHz frequency will not suffer harmful interference. Additionally, the proffered settlement, by reducing some of the issues and expediting discovery, will streamline this hearing.

The settlement raises no questions regarding RAM's character qualifications; there was no abuse of the FCC's processes. FCC policy has long favored voluntary settlements among parties. RAM has openly disclosed its settlement to the Bureau.

RAM is not required to actively engage in discovery of Capitol. Nonetheless, the settlement agreement will not have any adverse impact upon the course of this proceeding. RAM has cooperated with the Bureau through the long years of investigation that preceded this hearing, and has pledged its continued cooperation as a non-party; the Bureau's claim that RAM will cooperate with it only "grudgingly" or under compulsory process is speculative and untrue. Moreover, RAM was never required to enter an appearance in this proceeding; the HDO did not place any evidentiary burden upon RAM. There is no necessary evidence that is exclusively in RAM's possession; nearly all of the evidence under the designated issues is under Capitol's

control, or was obtained by FCC inspectors.

The dismissal of Capitol's PCP application provides RAM with the relief to which it is legitimately entitled under the FCC's Rules. That this result was achieved by settlement does not make it an abuse of process; the Bureau's Motion is without merit and should be denied.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

| | | |
|-------------------------------------|---|----------------------|
| In the Matters of |) | |
| |) | |
| Application of |) | |
| |) | |
| CAPITOL RADIOTELEPHONE, INC. |) | PR Docket No. 93-231 |
| d/b/a, CAPITOL PAGING |) | |
| |) | |
| For a Private Carrier Paging |) | |
| Facility on the 152.48 MHz |) | |
| Frequency at Huntington/Charleston, |) | |
| West Virginia; |) | |
| |) | |
| Imposition of Forfeiture Against |) | |
| |) | |
| CAPITOL RADIOTELEPHONE, INC. |) | |
| d/b/a, CAPITOL PAGING |) | |
| |) | |
| Former Licensee of Station WNSX-646 |) | |
| in the Private Land Mobile |) | |
| Services; |) | |
| |) | |
| Revocation of License of |) | |
| |) | |
| CAPITOL RADIOTELEPHONE, INC. |) | |
| d/b/a, CAPITOL PAGING |) | |
| |) | |
| Licensee of Stations WNDA-400 and |) | |
| WNWW-636 in the Private Land |) | |
| Mobile Services; |) | |
| |) | |
| Revocation of License of |) | |
| |) | |
| CAPITOL RADIOTELEPHONE COMPANY, |) | |
| INC. |) | |
| |) | |
| Licensee of Stations KWU373, |) | |
| KUS223, KQD614, and KWU204 in |) | |
| the Public Mobile Radio Service. |) | |

To: Hon. Joseph Chachkin, Administrative Law Judge

RAM TECHNOLOGIES OPPOSITION TO BUREAU MOTION TO ENLARGE ISSUES

RAM Technologies, Inc. ("RAM"), through its attorneys, and pursuant to Section 1.45 of the Commission's Rules, hereby submits its Opposition to the Private Radio Bureau's "Motion to Enlarge the Issues" (the "Bureau Motion"). For the following

reasons, the Bureau's Motion should be denied:

I. Summary of Facts

The Bureau's Motion would lead the Presiding Officer to believe that, once the Presiding Officer expressed his dissatisfaction with the Bureau's request for entry of a Consent Decree, the Bureau never again considered methods of streamlining these hearing proceedings: that is not the case. The Bureau most certainly did have such discussions with the parties to these proceedings (no one could logically object to streamlining these proceedings and preserving administrative and private resources). Consequently, the Bureau's Motion, and its recent, vociferous objections to RAM and Capitol Radiotelephone's attempt to streamline these proceedings, come as quite a surprise to RAM.

During the course of the Bureau's negotiations with RAM and Capitol, which were conducted under the time constraints of the discovery schedule, and a looming hearing deadline, Capitol broached with RAM an idea that all the Parties had previously discussed before the Presiding Officer at the pre-hearing conference: Capitol could voluntarily dismiss its PCP application.¹ By so doing, the issues in these proceedings could be narrowed, while the basic character qualifications issues, which prevented adoption of the Bureau's proposed Consent Decree, would be fully aired.

¹ This issue was discussed at the Pre-Hearing Conference in the context of the Presiding Officer's discussion of the denial of the Joint Motion to Enlarge the Issues.

While Capitol's dismissal of its PCP application would serve the Bureau's, and everyone's, interests in streamlining these proceedings, RAM would also obviously benefit from such an action: upon that dismissal of Capitol's application, Capitol would obviously no longer be able to cause harmful interference to RAM, or any other 152.480 MHz PCP licensee. Hence, Capitol's proposal would accomplish what RAM has striven to achieve from this Agency for the past three to four years: protection from harmful electrical interference for its more than 6,000 paging customers. Why that negotiated effort to achieve such laudatory goals would so obviously rile the Bureau is simply beyond RAM's comprehension. (Cf. Bureau Motion at 5).

Though RAM was named as a party to these proceedings, it certainly was not required to file any discovery requests against either Capitol or the Bureau; indeed, as the Bureau should know, RAM did not have to note its appearance in these proceedings. See 47 C.F.R. 1.221(e). Consequently, when Capitol indicated that its quid pro quo for dismissal of its PCP application, and its agreement not to apply for a 152.480 license for eight years, would be RAM's acquiescence in discovery of Capitol, which no law could require RAM to pursue anyway, RAM and its counselors simply could not refuse that offer, even at the risk of the Bureau's "hurt feelings."²

² The Bureau seems "miffed" that it was not included into these negotiations (Bureau Motion at 3), but then, the Bureau never invited RAM to participate in its settlement discussions with Capitol, until after it had drafted a Consent Decree (at that point, RAM's consent to the proposed Consent Decree was

The terms of the Settlement Agreement between RAM and Capitol are contained in the document that RAM voluntarily submitted to the Bureau, and which was attached to the Bureau's Motion: RAM had nothing to hide, there were no "side-agreements" or undisclosed terms, RAM did not receive any monetary compensation from Capitol. RAM simply obtained Capitol's agreement to take actions that will ensure interference-free service for RAM's customers for at least eight years.

In that contract agreement, RAM made clear its continued intent to respond to any and all FCC requests for information, and to abide by any and all rules governing these hearing proceedings. RAM, which has a spotless record of compliance with the FCC's Rules, has been an exemplar of cooperation and patience with the FCC from the first day that it brought the interference problems to the FCC's attention. The Bureau has no right or grounds to color RAM's cooperation as "grudging." (Cf. Bureau Motion at 4). In any case, any agreement contrary to the FCC's Rules, including Part 1 and the hearing discovery rules, would presumably be unlawful and unenforceable, and have no bearing on these proceedings. The Bureau's concerns about the impact of this private settlement on its ability to prosecute its case are thus entirely unwarranted.

aggressively courted by the Bureau). In any event, RAM's counsel voluntarily informed the Bureau about this partial settlement agreement; the Bureau did not inadvertently discover these facts, as its Motion suggests.

II. The Motion Violates Rule 1.229(d).

The Commission's Rules require that motions to enlarge issues must be supported by a sworn statement from an individual with personal knowledge. 47 C.F.R. § 1.229(d). The Bureau's Motion violates this Rule: it does not have any supporting affidavit. Consequently, the Bureau's Motion must be dismissed. See Angeles Broadcasting Network, 61 RR2d 480 (1986); Eastern Broadcasting Corp., 29 FCC 2d 472, 474-75 (Rev. Bd. 1971); Seven League Productions, Inc., 3 FCC 2d 227, 228 (Rev. Bd. 1966).

In contrast to the Bureau's bare allegations, RAM's President and owner, Robert A. Moyer, Jr., unequivocally and under oath denies that RAM, in entering into a partial settlement with Capitol, had any intent to abuse the FCC's processes, to interfere with the Bureau's prosecution of its case, or to somehow "profit" from that partial settlement. Mr. Moyer's Declaration explains in detail RAM's reasons for entering into the Settlement Agreement. See Declaration of Robert A. Moyer, Jr., Pres., attached hereto as Exhibit One. There simply is no issue to be made against RAM's licensee qualifications, and the Bureau's Motion should be swiftly denied.

III. There has been no Abuse of Process.

Without benefit of any law or facts, the Bureau has made the bald accusation that Capitol and RAM have conspired to "abuse the Commission's processes." That accusation is false, it is unwarranted by the law and the facts, and it is entirely unfair

to RAM, which has been completely cooperative with the Bureau throughout its protracted investigation of Capitol.

The Bureau has suddenly and inexplicably opposed RAM's attempt to achieve what the Bureau once sought: a favorable resolution of RAM's interference complaint, with the least expenditure of agency and private resources, in compliance with the Commission's Rules. It is somewhat unfair, to say the least, that the Bureau should now so flippantly accuse RAM of abusing the FCC's processes, when RAM was merely following the Bureau's lead, and Commission precedents which favor negotiated settlements between private parties.

The Presiding Officer did not sanction the Bureau when it attempted to settle this case; it is beyond RAM's comprehension as to why the Bureau believes that RAM and Capitol should be sanctioned for their private settlement efforts. In any event, relevant FCC authorities on point, which the Bureau's Motion ignores,³ expressly encourage the parties to a complaint proceeding to privately settle their differences.

For example, in the Commission's recent rulemaking proceeding to amend its rules regarding formal complaints against common carriers, the Commission repeatedly stressed its desire to encourage parties to a formal complaint proceeding to attempt to

³ The failure to disclose to a tribunal relevant law under certain circumstances could be considered a violation of the District of Columbia Rules of Professional Conduct. See D.C. Rules of Professional Conduct Rule 3.3, Comment 2.

reach negotiated settlements.⁴ See Notice of Proposed Rulemaking, "Amendment of the Rules Governing Procedures to be Followed when Formal Complaints are Filed Against Common Carriers," CC Docket no. 92-26, at 3, n.2, and 7 (March 12, 1992).

In other instances, the FCC has observed that a party that files a petition to deny an application, (which is what RAM did), "is always free to withdraw its challenge, but such an action does not necessarily dispose of the issues raised in the petition." Booth American Company, 36 RR 2d 717, 719 (1976). That is precisely what RAM hoped to achieve: after having provided three years' worth of its time, money, energy, and cooperation in bringing these allegations to the Bureau's attention, RAM was hoping that it could step back, and let the Bureau gallantly bring this investigation to completion. Obviously, that is not to be the case.

In another analogous case, Judge Miller denied a motion to enlarge issues, where the movant claimed that one party's settlement overtures to the other were intended "to impede, inhibit, and obstruct" the prosecution of the moving party's application, and that these contacts "impeded the integrity of the Commission's processes in an improper manner." Barnes Enterprises, Inc., 42 RR 2d 383, 384, 387 (A.L.J., 1978). Judge

⁴ Though this hearing apparently arose out of RAM's "informal" complaint, as opposed to a formal Title II complaint, both the Common Carrier and the Private Radio Bureaus have been involved, and Capitol is most certainly a common carrier.

Miller ruled that "these acts should not be condemned. They are normal, acceptable business practices." The parties "pursued normal bilateral (not unilateral) settlement negotiations." Id. at 389.

That is precisely what occurred here: RAM and Capitol attempted to settle their business differences, while acknowledging that they have duties as parties to the pending hearing proceedings. There was nothing unusual or unlawful about the Settlement Agreement, and the Bureau's Motion should be denied.

IV. The Bureau's Duty to Prosecute.

The Bureau seems to suggest that since RAM brought certain Rule violations to the FCC's attention (the "driving force", to use the Bureau's earlier expression), RAM should not be allowed to minimize the financial burden that these protracted proceedings have had on it (Bureau Motion at 4), even though the problem of which RAM complained (namely, Capitol's PCP operations) could be resolved by the Settlement Agreement. Though RAM has been nothing but cooperative with the Bureau in ferreting out these violations, surely it is the Bureau's responsibility, not RAM's, to enforce compliance with its Rules. The HDO quite clearly stated that, with the exception of Capitol's burden with respect to its PCP application, the burden of proof and the burden of proceeding as to all other matters in this hearing is on the Bureau.

Notwithstanding Commissioner Duggan's concerns (expressed at the Commissioner's Open Meeting where it adopted the HDO) as to why the Bureau did not sooner respond to RAM's original complaint,⁵ it is less than fair for the Bureau to object to shouldering the responsibility for enforcing its Rules. While RAM no longer expects to be complimented for all its efforts in helping the FCC enforce its Rules, it surely does not merit castigation for wanting to let the Bureau finish the job.

V. The Settlement Would not "Burden" the Bureau.

The Bureau has previously suggested that unless RAM is bankrupt, RAM's financial concerns are not relevant to its continued, active participation in these proceedings. (Bureau Opposition ("Opposition") to RAM Motion to Withdraw at 5). Ironically, in that pleading, the Bureau also complained that RAM's withdrawal would impose a financial burden on the Agency. (Opposition at 3). In any event, the terms of the Settlement Agreement should make no difference to the Bureau's prosecution of its case, despite the Bureau's protests to the contrary. (Cf.

⁵ With regard to footnote 2 of the Bureau's Opposition to Motion to Withdraw: RAM did not make any "implications" about the pace of the enforcement proceedings, but, Commissioner Duggan asked why the Bureau did not respond sooner to the informal complaints that were filed throughout 1990. And, so that the record is accurate, it was RAM that requested "conciliatory" meetings with the Bureau and Capitol in an effort to settle the interference problem. Also, it was RAM that repeatedly contacted the Field Operations Bureau to request that they investigate the interference problems. RAM simply believes that it has performed more than its fair share of the work to date as a "private attorney general" on the FCC's behalf.

Bureau Motion at 4).

Two of the five potential witnesses that the Bureau has already identified are not RAM employees. (Bureau Opposition at 4). Also, since RAM was never required to note its appearance in this Hearing, the Bureau cannot honestly claim that it planned its prosecution of its case around RAM's active participation in the discovery process (for that matter, the Bureau did not solicit RAM's participation when it attempted to settle this case with Capitol). The FCC made a decision to incur litigation costs when it designated this matter for Hearings; it is inappropriate for the Bureau to now complain about having to prosecute its case.

VI. No Evidence is "Exclusively" Under RAM's Control.

The Bureau is not correct in stating that evidence on certain designated issues, in particular issues (a), (c), (d), (f) and (g), is in the "exclusive possession" of RAM. (Cf. Bureau Motion at 4). First of all, the FCC did not ask for RAM's assistance in drafting the HDO, so RAM does not know what evidence the Bureau believes is relevant to which issues. Second, Capitol and its officers/employees have "control" over the evidence designated in all of the issues. Third, the facts underlying issue "(d)" were adduced by the FCC's Field Technicians, not by RAM. Fourth, the facts underlying issue "(g)" were adduced by an individual no longer employed by RAM; the Bureau would have to produce him as a non-party witness

whether or not RAM declined to engage in discovery of Capitol.

Finally, since the Bureau admits that it may find that "the testimony of some or all of these [its potential witnesses] persons is not required," (Opposition at 4, n.3), and since RAM merely reiterated in the Settlement Agreement its longstanding practice of responding to all Bureau requests for information, the Bureau really does not have any legitimate reason to oppose the Settlement Agreement, or to make reckless allegations against RAM's character qualifications.

VII. There has been no "Private Gain" to RAM.

The most unfair accusation in the Bureau's Motion is that RAM has "abused the Commission's processes for [its] ... own private gain." (Bureau Motion at 5).⁶ Let the record show that this is what RAM has "gained" from notifying the Bureau about apparent violations of the FCC's Rules:

Attached hereto as Exhibit Two is a copy of a letter sent to Chief Ralph Haller in March of 1991, nearly one year after RAM first alerted the Bureau to the problems it was experiencing with Capitol. As indicated therein, sometime after RAM filed its complaints against Capitol, the Bureau, without prior notice or explanation, set-aside RAM's pending application to expand its PCP service area. During that same time-period, the Bureau,

⁶ Though the Bureau's attorneys are not bound by Rule 11 of the Federal Rules of Civil Procedure in this hearing, they are bound by the Rules of Professional Conduct, in particular, Rule 3.1, concerning "Meritorious Claims and Contentions."

without prior notice or explanation, froze the processing of all of RAM's private radio applications. That freeze was lifted only after RAM's attorneys requested a settlement conference between the Bureau, Capitol, and RAM to attempt to resolve the interference problem.

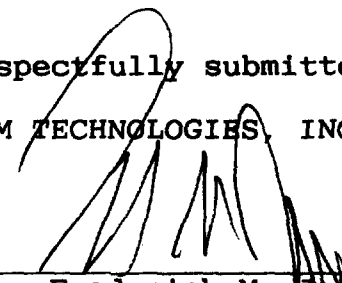
Attached hereto as Exhibit Three is a copy of a letter that RAM's attorneys sent to the Bureau upon receipt of the subject Motion to Enlarge. As shown therein, RAM had been conscientiously cooperating with the Bureau's prosecution of its case, while, unbeknownst to RAM, the Bureau was secretly preparing to raise character issues against RAM. These, then, are examples of what RAM has "gained" from bringing these rule violations to the Commission's attention.

RAM has nothing further to "gain" from the Settlement Agreement, or its continued involvement in these proceedings, other than that to which every FCC licensee is entitled: the quiet right to operate an FCC-licensed radio station in the public's interest, without threat of harmful interference, or administrative caprice. RAM would simply like to conclude these proceedings efficiently, expeditiously, on friendly terms with the FCC and its Bureaus, if possible, and in a manner that does justice to RAM's customers and its commitment to providing superior private carrier paging services.

Conclusion

For all the foregoing reasons, RAM respectfully requests that the Bureau's Motion be Denied or Dismissed.

Respectfully submitted,
RAM TECHNOLOGIES, INC.

By 
Frederick M. Joyce
Christine McLaughlin
Its Attorneys

JOYCE & JACOBS
2300 M Street, N.W.
Suite 130
Washington, DC 20037
(202) 457-0100

December 17, 1993

EXHIBIT ONE

DECLARATION OF ROBERT A. MOYER, JR.

I, Robert A. Moyer, Jr., do hereby declare under penalty of perjury as follows:

1. I am over the age of eighteen and competent to make this Declaration.
2. I am the President and Chief Executive Officer of RAM Technologies, Inc. ("RAM"), which is the licensee of, among other things, Private Carrier Paging facilities, and is a party to these FCC hearing proceedings.
3. I hereby make this Declaration in support of the foregoing Opposition to the Bureau's Motion to Enlarge Issues. I unequivocally and categorically deny the Bureau's allegation that RAM has attempted to interfere with the FCC's processes or the Bureau's prosecution of its case. I unequivocally and categorically deny that RAM has "abused the Commission's processes for its own private gain." Those allegations are untrue and unfair.
4. The Settlement Agreement referred to in the Bureau's Motion came about at Capitol's suggestion, as a means of streamlining these hearing proceedings. Capitol offered to dismiss its PCP application, and not apply for a license on the 152.480 MHz for at least eight years. Since that is all we ever hoped to accomplish from these proceedings, we could not see how we could refuse that offer. In return, Capitol wanted RAM to suspend its discovery requests of Capitol. We made it perfectly clear to Capitol that we had every intention of continuing to cooperate with the Bureau and the FCC in their prosecution of this case, as we have from day one. The Settlement Agreement says that in writing. But, since we have no obligation to file our own discovery requests against Capitol, and since we have already provided the Bureau with so much evidence in this case, we could not see how we could turn down Capitol's offer. Our actions were perfectly consistent with what the Bureau had previously been trying to accomplish.
5. We want to be cooperative with the Bureau, but, we also do not want to spend more money on these proceedings than is necessary. I don't understand why the Bureau objects to RAM's managing to resolve its interference problem directly with Capitol. There are no agreements between Capitol and RAM other than the terms spelled out in the Settlement Agreement. RAM is not being "bought off" by Capitol; to the contrary, RAM has already incurred tens of thousands of dollars in legal

and engineering expenses in attempting to resolve these interference problems. Regardless of the outcome of these hearings, the FCC will not be able to reimburse RAM for those costs. Nevertheless, RAM will continue to cooperate with the Bureau.

6. I am very upset with the Bureau's unwarranted statement in its Motion that RAM lacks the qualifications necessary to be an FCC licensee. I have been in the paging business for more than 20 years; my company and I have a perfect record of compliance with the FCC's Rules. We were not the ones who violated the FCC's Rules. We have gone out of our way to cooperate with the Bureau throughout this Capitol ordeal, and have not once received any expression of gratitude from this Agency for our assistance. I believe that I have always been on friendly terms with the FCC and its staff, and I hope that we can conclude these hearings on friendly terms.

In addition, I have reviewed all the foregoing statements of fact in our Opposition, and to the best of my knowledge, information and belief, the facts set forth herein are true and correct.


Robert A. Moyer Jr.

Date: 12/16/93

JOYCE & JACOBS

ATTORNEYS AT LAW

2300 M STREET, N.W.

EIGHTH FLOOR

WASHINGTON, D.C. 20037

(202) 457-0100

EXHIBIT TWO

FACSIMILE

(202) 457-0186

MARYLAND OFFICE
CHEVY CHASE METRO BUILDING
TWO WISCONSIN CIRCLE
SEVENTH FLOOR
CHEVY CHASE, MD 20815

March 13, 1991

RECEIVED

MAR 13 1991

Via Hand Delivery

Ralph A. Haller, Chief
Private Radio Bureau
Federal Communications Commission
Washington, DC 20554

Federal Communications Commission
Office of the Secretary

RE: RAM Technologies, Inc.
Pending Applications

Dear Mr. Haller:

Thank you for sending me a copy of your March 7, 1991 letter to Congressman Carl C. Perkins concerning the status of RAM Technologies' pending private radio applications. Your letter is the first written response that RAM has received from the Private Radio Bureau after many months of telephone inquiries concerning the status of those applications. So that the record is fair and accurate, however, RAM Technologies wishes to point out certain omissions and inaccuracies in your letter to the Congressman.

Your letter made no reference to the Bureau's decision in October of 1990 to set-aside RAM's license to operate on the 152.480 frequency at Lexington, KY. We have notified your staff on several occasions that the Lexington site is 100 miles away from Capitol Radiotelephone's PCP facilities and is of no relevance to the matters raised in RAM's Petition for Reconsideration. Yet, despite numerous telephone inquiries to the Bureau, the Bureau has yet to provide any explanation for that set-aside decision.

That decision has caused demonstrable economic hardship to RAM, while impeding the expansion and improvement of RAM's PCP services throughout Western Kentucky. Once again, we are asking the Bureau to explain why it has set-aside RAM's Lexington license, and to explain what needs to be done to get that license reinstated.

The same questions apply to RAM's application for radio testing authority. NABER, the FCC-designated frequency coordinator, was contacted concerning that application and explained that testing authority applications are "routinely

granted" by the Licensing Division, yet, on orders of the Compliance Branch, RAM's application was placed on indefinite hold. Your letter to the Congressman did not explain why the Bureau took that action against a "routine" application for testing authority.

Finally, your letter stated that RAM must provide a "satisfactory showing of need" before the applications for 157.740 authority can be granted. NABER, the designated frequency coordinator, has indicated that it has never heard of this requirement before now. Attached hereto you will please find PCP license authorizations from different licensees, all of which operate in or near RAM's service areas. As you can see, each licensee was granted the identical authority that RAM has requested: without any fanfare, delay, or request for "satisfactory showing of need," the Bureau granted these licensees authority to operate on both the 157.74 frequency and the 152.480 frequency.

You see, Mr. Haller, the Bureau's statements and actions continue to suggest that RAM's applications have been inexplicably and unfairly singled-out for denial or delay. The Bureau is certainly capable of finding a hundred different ways under the Rules to delay or deny RAM's applications; but no one in the Bureau has told us why this is happening.

Certainly, Section 90.75 (e) states that the Bureau may request a showing of need before granting an additional frequency in the same service area; but, the facts are that the Bureau has not enforced this requirement against any other licensee in RAM's service areas until now. NABER's comments suggest that the Bureau has not enforced this rule anywhere in the United States. In short, without any explanation from this Bureau, all of RAM's applications have been effectively stayed and subjected to unusually intense agency scrutiny.

Nevertheless, since RAM has attempted to comply with all of this agency's requests from the outset, attached hereto you will please find RAM's "Minor Amendment" to its pending 157.740 applications. The Minor Amendment explains that RAM needs the additional frequency because of congestion on the 152.480 frequency and to protect its PCP subscribers from continuing harmful interference on the 152.480 frequency. Upon receipt of this information, the Bureau should have no further justifications for delaying the grant of RAM's applications.

Surely, the Bureau's licensing decisions are bound by the dictates of constitutional due process to no less a degree than any government actions. RAM has not asked for special consideration for its applications, merely equal consideration under the law for what should be a routine licensing matter.

There should be no doubt about RAM's basic qualifications to

be a Commission licensee. RAM has provided high-quality PCP service to thousands of subscribers for several years. Indeed, before RAM notified the Bureau of Capitol's intent to cause harmful interference on the 152.480 frequency, RAM had never experienced any delays or controversy concerning any of its private radio applications. The Bureau's actions most certainly will have a chilling effect on licensees who complain to the Bureau about intentional harmful interference.

As you can see from the attached letter from the U.S. Small Business Administration, Robert A. Moyer, the President of RAM Technologies, has been named "Small Business Person of the Year" for the entire State of Kentucky. His awards ceremony here in Washington in May will be attended by many White House officials and Members of Congress. In but another tragic irony of this most Kafka-like of agency proceedings, this exemplar of the communications industry will be honored by the federal government on one side of Washington, while across town, this Bureau continues to cause his business and his subscribers substantial harm for wholly inexplicable reasons.

With all due respect, these questions remain unanswered. The only certainty is that the Bureau has taken no action against Capitol Radiotelephone, the party accused of causing harmful interference, while RAM's business and subscribers have most certainly suffered from the Bureau's delays and adverse licensing actions.

If there is a higher agency purpose behind these essentially punitive actions, we are at a loss to discern it. By now, explanations are of little value to RAM. We must simply ask that the Bureau, in fairness, grant RAM's applications without further delay. Thank you for your time and attention to this matter.

Sincerely,


Frederick M. Joyce
Counsel for RAM Technologies, Inc.

FMJ:est

cc: Chairman Alfred C. Sikes
Inspector General James Warwick
Hon. Carl C. Perkins
Robert A. Moyer, Jr., Pres.
Kenneth Hardman, Esq.

RADIO STATION LICENSE

REFERENCE COPY

THIS IS NOT A LICENSE

Licensee Name: T&T COMMUNICATIONS INC

Radio Service: IB BUSINESS

License Issue Date: 900912

Call Sign: WNSX645

File Number: 9004192362

License Expiration Date: 950912

Frequency Advisory No: 900640123

Number of Mobiles by Category: Vehicular - ***** Portable - ***2**Aircraft - ***** Marine - ***** Pagers **5000*

Station Technical Specifications

| FCC I.D. | Frequencies (MHz) | Station Class | No. of Units | Emission Designator | Output Power (Watts) | E.R.P. (Watts) | Ground Eleva | Ant. Hgt. To Tip | Antenna Latitude | Antenna Longitude |
|----------|-------------------|---------------|--------------|---------------------|----------------------|----------------|--------------|------------------|------------------|-------------------|
| 1: | 152.48000 | FB6 | 1 | 20K0F3E | 350.000 | 1409 | 3040 | 160 | 39-23-00 | 079-19-07 |
| | 464.33750 | MO | 1 | 20K0F3E | 2.000 | 63.000 | | | | |
| | 469.33750 | MO | 1 | 20K0F3E | 2.000 | 63.000 | | | | |
| 2: | 152.48000 | FB6 | 1 | 20K0F3E | 350.000 | 1409 | 1639 | 190 | 39-04-22 | 080-34-50 |
| | 464.33750 | MO | 1 | 20K0F3E | 2.000 | 63.000 | | | | |
| | 469.33750 | MO | 1 | 20K0F3E | 2.000 | 63.000 | | | | |
| 3: | 152.48000 | FB6 | 1 | 20K0F3E | 350.000 | 1409 | 4125 | 130 | 38-21-34 | 080-38-51 |
| 4: | 152.48000 | FB6 | 1 | 20K0F3E | 350.000 | 1409 | 3525 | 160 | 39-11-15 | 079-13-26 |
| 5: | 152.48000 | FB6 | 1 | 20K0F3E | 350.000 | 1409 | 3060 | 80 | 38-14-02 | 080-32-27 |
| 6: | 152.48000 | FB6 | 1 | 20K0F3E | 350.000 | 1409 | 1280 | 260 | 40-18-51 | 079-34-03 |

TRANSMITTER STREET ADDRESS

CITY

COUNTY

STATE

1: BETHLEHEM RD 2 1/2 E OAKLAND
2: 1.5 MI E US 79 & 2.53 MI N SR 33
3: 6 MI N DUO 8 MI S RICHWOOD
4: 1000' S SR 93 ON 42
5: 3 MI N
6: .7 MI S SR 130 MOUNT THOR RD

MOUNTAIN LAKE
WESTON
DUO
BISMARCH
RICHWOOD
HEMPFIELD

GARRETT
LEWIS
GREENBRIER
GRANT
NICHOLAS
WESTMORELAND

MD
WV
WV
WV
WV
PA

AREA OF OPERATION

SITE 1: 70 MIRA 39-23-00N 079-19-07W MOUNTAIN LAKE GARRETT MD
SITE 2: 70 MIRA 39-04-22N 080-34-50W WESTON LEWIS WV

PAINTING AND LIGHTING SPECIFICATIONS

SITE 6: SEE ATTACHED FORM 715/715A PARAGRAPHS: 1 3 11 21

CONTROL POINTS: RT 8 BOX 343 FAIRMONT WV

CONTROL POINT PHONE: 304-366-1300

SPECIAL COND: SP: SERVICE MAY ONLY BE PROVIDED TO ENTITIES WHO WOULD BE ELIGIBLE UNDER RULE 90.75.



FEDERAL
COMMUNICATIONS
COMMISSION

900912N 17 1 22
T&T COMMUNICATIONS INC
DONNIE TUCKER
RT 8 BOX 343
FAIRMONT WV 26554

PAGE 1 OF 2

This authorization becomes invalid and must be returned to the Commission if the stations are not placed in operation within eight months, unless an extension of time has been granted. EXCEPTION: 800 MHz trunked and certain 900 MHz station licenses cancel automatically if not constructed within one year.

Federal Communications Commission
Gettysburg, PA 17325-7245**RADIO STATION LICENSE**

Licensee Name: T&T COMMUNICATIONS INC

Radio Service: IB BUSINESS

License Issue Date: 901116

Call Sign: WNUV480

File Number: 9010009842

License Expiration Date: 951116

Frequency Advisory No: 902690149

Number of Mobiles by Category: Vehicular - ***** Portable - ***** Aircraft - ***** Marine - ***** Pagers **5000*

901116N 251 1 12

T&T COMMUNICATIONS INC
DONNIE TUCKER
RT 8 BOX 343
FAIRMONT

WV 26554

Station Technical Specifications

| FCC I.O. | Frequencies (MHz) | Station Class | No. of Units | Emission Designator | Output Power (Watts) | E.R.P. (Watts) | Ground Eleva | Ant. Hgt. To Tip | Antenna Latitude | Antenna Longitude |
|----------|-------------------|---------------|--------------|---------------------|----------------------|----------------|--------------|------------------|------------------|-------------------|
| 1: | 157.74000 | FB6 | 1 | 20K0F3E | 350.000 | 1409 | 2240 | 198 | 39-33-59 | 079-52-34 |
| 2: | 157.74000 | FB6 | 1 | 20K0F3E | 350.000 | 1409 | 1840 | 198 | 39-26-40 | 079-59-10 |
| 3: | 157.74000 | FB6 | 1 | 20K0F3E | 350.000 | 450.000 | 1452 | 450 | 39-17-05 | 080-19-47 |
| 4: | 157.74000 | FB6 | 1 | 20K0F3E | 244.000 | 400.000 | 3420 | 190 | 38-52-21 | 079-55-37 |
| 5: | 157.74000 | FB6 | 1 | 20K0F3E | 350.000 | 1409 | 1270 | 223 | 40-11-25 | 080-14-00 |
| 6: | 157.74000 | FB6 | 1 | 20K0F3E | 350.000 | 1409 | 1639 | 190 | 39-02-32 | 080-23-41 |

TRANSMITTER STREET ADDRESS**CITY****COUNTY****STATE**

| | | | | |
|----|-------------------------------------|------------|------------|----|
| 1: | .2 MI W OF CTY RT 72 ON CTY RT 72 1 | MORGANTOWN | MONONGALIA | WV |
| 2: | .7 MI FROM CTY RT 84 4 ON CTY RT 84 | FAIRMONT | MARION | WV |
| 3: | .5 MI N US 50 ON PINNICKINWICK RD | CLARKSBURG | HARRISON | WV |
| 4: | RICH MOUNTAIN RD 3 MI NW | BEVERLY | RANDOLPH | WV |
| 5: | BOYD HILL 1 MI NE | WASHINGTON | WASHINGTON | PA |
| 6: | 1.5 MI E US 79 2.57 N OF SR 33 | WESTON | LEWIS | WV |

PAINTING AND LIGHTING SPECIFICATIONS

SITE 3: SEE ATTACHED FORM 715/715A PARAGRAPHS: 1 3 4 13 21

CONTROL POINTS: RT 8 BOX 343 FAIRMONT WV

CONTROL POINT PHONE: 304-366-1300

SPECIAL COND: ERP OF THE 157.74 MHZ TRANSMITTER ON RICH MOUNTAIN NEAR BEVERLY WV LIMITED TO 4.0 WATTS AT 170.7 DEGREES TRUE AZIMUTH BEARING TOWARD GREEN BANK WV.

EMISSION DESIGNATOR(S) CONVERTED TO CONFORM TO DESIGNATOR(S)
SET OUT IN PART 2 OF THE COMMISSION'S RULES.

PAGE 1 OF 1

FEDERAL
COMMUNICATIONS
COMMISSION

This authorization becomes invalid and must be returned to the Commission if the stations are not placed in operation within eight months, unless an extension of time has been granted. EXCEPTION: 800 MHz trunked and certain 800 MHz station licenses cancel automatically if not constructed within one year.